

Exhibit “B”

Case Information

2021-DCL-03385 | Eddie Vela vs. Home Depot U.S.A., Inc.

Case Number
2021-DCL-03385
File Date
06/07/2021

Court
445th District Court
Case Type
Other Injury or Damage

Judicial Officer
Rincones, Gloria M
Case Status
Pending

Party

Plaintiff
Vela, Eddie

Active Attorneys ▼
Lead Attorney
AZIZ, MUHAMMAD SULEIMAN
Retained

Defendant
Home Depot U.S.A., Inc.

Address
Corporation Service Company d/b/a CSC-Lawyers Inco
211 E. 7th Street, Suite 620
Austin TX 78701

Events and Hearings

06/07/2021 Original Petition (OCA) ▼

Comment

Plaintiff's Original Petition

06/07/2021 Efiled Original Petition Document ▼

Plaintiff's Original Petition

Comment

Plaintiff's Original Petition

06/07/2021 Citation Issued ▼

E-Sig - Citation - Personal Service

Comment

Emailed Citation to 'ignacio@martinezlegal.com', V.F.

06/07/2021 Citation ▼

Served

06/09/2021 11:06 AM

Anticipated Server

Civil Process Server

Anticipated Method

In Person

Actual Server

Civil Process Server

Returned

06/21/2021

06/21/2021 Service Return ▼

Defendant Home Depot U.S.A. Inc Return of Service

Comment

Defendant Home Depot U.S.A. Inc Return of Service

Financial

Vela, Eddie

Total Financial Assessment	\$315.00
Total Payments and Credits	\$315.00

6/7/2021	Transaction Assessment			\$315.00
6/7/2021	E-File Electronic Payment	Receipt # 2021-10632	Vela, Eddie	(\$315.00)

Documents

- Plaintiff's Original Petition
- E-Sig - Citation - Personal Service
- Defendant Home Depot U.S.A. Inc Return of Service

CAUSE NO. 2021-DCL-03385

EDDIE VELA,

Plaintiff,

v.

HOME DEPOT U.S.A., INC.,

Defendant.§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

CAMERON COUNTY, TEXAS

Cameron County - 445th District Court

____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

COMES NOW, Eddie Vela ("Plaintiff"), and files his Original Petition against Home Depot U.S.A., Inc. ("Defendant"), and in support thereof would respectfully show this Honorable Court as follows:

I.
DISCOVERY CONTROL PLAN

1. Pursuant to Rules 190.1 and 190.4 of the Texas Rules of Civil Procedure, Plaintiff intends that discovery be conducted under Level 3.

II.
PARTIES

2. Plaintiff, Eddie Vela, is a resident of Cameron County, Texas.

3. Defendant, Home Depot U.S.A., Inc. ("Home Depot"), is a foreign corporation doing business in the State of Texas with a principal place of business in Texas. Defendant may be served through its registered agent: Corporation Service Company d/b/a CSC-Lawyers Inco, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

4. Plaintiff specifically invokes the right to institute this suit against whatever entity was conducting business using the assumed or common name of "Home Depot," with regard to the events described in this petition. Plaintiff expressly invokes his right under Rule 28 of the

Texas Rules of Civil Procedure to have the true name of this party substituted at a later time upon the motion of any party or one of the Court.

III.

JURISDICTION AND VENUE

5. The Court has jurisdiction of the subject matter of this lawsuit and the amount in controversy is above the minimum jurisdictional limits of this Honorable Court as Plaintiff seeks aggregate monetary relief over \$1,000,000.00. *See* TEX. R. CIV. P. 47. Additionally, removal to federal court would be improper because this lawsuit does not involve a federal question, this lawsuit lacks diversity and/or because of the forum defendant rule.

6. Pursuant to Texas Civil Practice and Remedies Code Section 15.002(a)(1), Cameron County is the proper venue because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

IV.

FACTS

7. On or about July 17, 2020, Plaintiff Eddie Vela was an invitee on the premises of Home Depot #6984, a home improvement store owned and operated by Defendant Home Depot, located at 605 W. Morrison Road, Brownsville, Texas 78521. As Plaintiff was shopping for lumber, a 2x4 fell off the second level of the lumber rack and struck him in the head, neck, back and shoulder. As a result of the incident, Plaintiff suffered serious injuries.

V.

CAUSES OF ACTION AGAINST DEFENDANT

A. NEGLIGENCE

8. At the time and on the occasion in question, Defendant committed acts and omissions, which collectively and separately constituted negligence. Defendant had a duty to exercise ordinary care, meaning the degree of care that would be used by an entity of ordinary

prudence under the same or similar circumstances. Defendant breached that duty in one or more of the following ways:

- a. Failing to properly arrange lumber in the rack;
- b. Failing to properly secure lumber in the rack;
- c. Failing to maintain the rack and premises in a reasonable and safe condition;
- d. Failing to correct the unreasonably dangerous condition created by the lumber in the rack;
- e. Failing to warn invitees, including Plaintiff, of the unreasonably dangerous condition created by the lumber in the rack;
- f. Failing to properly inspect the rack and premises in a timely manner;
- g. Failing to properly train its employees regarding securing lumber in the rack;
- h. Failing to properly supervise its employees regarding securing lumber in the rack;
- i. Failing to implement proper policies, procedures and/or rules to make the premises reasonably safe;
- j. Failing to use ordinary care in the hiring and retention of employees; and
- k. Other acts or omissions deemed negligent.

9. These breaches, among others, constituted negligence. Such negligence was a proximate cause of the accident and Plaintiff's injuries and damages.

B. PREMISES LIABILITY

10. Defendant owned, operated, maintained and controlled the premises where the incident occurred. Plaintiff was an invitee who entered Defendant's premises with Defendant's knowledge and for their mutual benefit. The condition of the area where Plaintiff was injured – the lumber rack – posed an unreasonable risk of harm, and Defendant and/or its employees knew or reasonably should have known of the unreasonably dangerous condition and/or situation. Plaintiff did not have actual knowledge of the unreasonably dangerous condition and/or situation.

Defendant had a duty to either warn Plaintiff of the unreasonably dangerous condition and/or situation, or make the unreasonably dangerous condition unreasonably safe. Defendant breached this duty by failing to adequately warn Plaintiff of this unreasonably dangerous condition and/or situation, and by failing to make the unreasonably dangerous condition and/or situation reasonably safe. Defendant's breaches of its duties proximately caused Plaintiff's injuries.

C. GROSS NEGLIGENCE

11. Plaintiff alleges that all acts, conduct, and/or omissions on the part of Defendant, taken singularly or in combination, constitute gross negligence and were the proximate cause of Plaintiff's injuries and damages. Defendant's acts and/or omissions, when viewed objectively from Defendant's standpoint at the time such acts and/or omissions occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant had actual, subjective awareness of the risk, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiff with an intentional state of mind. Such gross negligence was a proximate cause of the occurrence and Plaintiff's injuries and damages. Therefore, Plaintiff is entitled to punitive and/or exemplary damages.

**VI.
DAMAGES**

12. As a result of this incident, Plaintiff sustained serious injuries and seeks compensation for the following damages:

- a. Past and future mental anguish;
- b. Past and future physical pain and suffering;
- c. Past and future bodily impairment and disability;
- d. Past and future medical expenses;
- e. Past and future lost wages and loss of earning capacity;

- f. Loss of household services;
- g. Loss of enjoyment of life;
- h. Disfigurement and scarring;
- i. Costs of suit;
- j. Exemplary damages;
- k. Pre-judgment and post-judgment interest as allowed by law; and
- l. Any and all other damages to which Plaintiff may be justly entitled.

VII.
PRESERVATION OF EVIDENCE

13. Plaintiff hereby requests and demands that Defendant and its agents, attorneys, and insurers preserve and maintain all evidence pertaining to any claim or defense to the incident made the basis of this lawsuit, or the damages resulting therefrom, including but not limited to photographs; videotapes; audiotapes; recordings; business records, memoranda; files; facsimiles; e-mails; voicemails; text messages; sales receipts; invoices; commission records; tax records; telephone messages; telephone calling card transactions; calendar entries; diary entries; any incident report; and any electronic image, data or information related to the referenced incident. Failure to maintain such items, including but not limited to any other items previously requested and demanded to be preserved before the subject lawsuit ensued, will constitute a “spoliation” of the evidence and may subject Defendant to sanctions.

VIII.
TRCP 193.7

14. Pursuant to Texas Rule of Civil Procedure 193.7, Defendant is hereby put on actual notice that any documents it produces in response to written discovery will be used in pretrial

proceedings and at trial and will be deemed authentic unless it makes valid objections to authenticity pursuant to this rule.

IX.
JURY DEMAND

15. Plaintiff hereby requests the causes of actions alleged herein be tried before a jury consisting of citizens residing in Cameron County, Texas.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, and that upon final hearing, Plaintiff has judgment for all damages in accordance with his pleadings and proof, for costs of Court herein expended, for interest, both pre- and post-judgment, to which he is entitled under the law, and for such other and further relief, both general and special, legal and equitable, to which he may be justly entitled.

Respectfully submitted,

**ABRAHAM, WATKINS, NICHOLS,
AGOSTO, AZIZ & STOGNER**

By: /s/ Muhammad S. Aziz
MUHAMMAD S. AZIZ
Texas Bar No. 24043538
DAVID J. BALUK
Texas Bar No. 24078186
800 Commerce Street
Houston, Texas 77002
Telephone: (713) 222-7211
Facsimile: (713) 225-0827
Email: maziz@awtxlaw.com
Email: dbaluk@awtxlaw.com

-and-

IGNACIO G. MARTINEZ LAW FIRM

By: /s/ Ignacio G. Martinez

IGNACIO G. MARTINEZ

Texas Bar No. 24049105

1205 N. Express

Brownsville, Texas 78520

Telephone: (956) 542-2264

Facsimile: (956) 269-9007

Email: ignacio@martinezlegal.com

ATTORNEYS FOR PLAINTIFF

CITATION – PERSONAL SERVICE – TRCP 99

THE STATE OF TEXAS

2021-DCL-03385-I

Eddie Vela § IN THE 445TH DISTRICT COURT
VS § OF
Home Depot U.S.A., Inc. § CAMERON COUNTY, TEXAS

TO Home Depot U.S.A., Inc.
Corporation Service Company d/b/a CSC-Lawyers Inco,
211 E. 7th Street, Suite 620
Austin TX 78701

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at [TexasLawHelp.org](https://www.texaslawhelp.org)." TRCP. 99

You are hereby commanded to appear by filing a written answer to **Plaintiff's Original Petition** at or before 10:00 o'clock A.M. on the Monday next after the expiration of 20 days after the date of service of this citation before the Honorable 445th District Court of Cameron County, at the Courthouse in said County in Brownsville, Texas. Said **Plaintiff's Original Petition** was filed in said court on **June 07, 2021**, in the above entitled cause.

2021-DCL-03385-I

Eddie Vela
vs.
Home Depot U.S.A., Inc.

The nature of Petitioner's demand is fully shown by a true and correct copy of **Plaintiff's Original Petition** accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

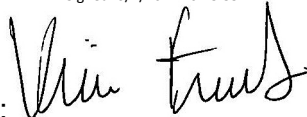
Issued and given under my hand and seal of said Court at Brownsville, Texas, on this the 7th day of June, 2021.

ATTORNEY:
MUHAMMAD SULEIMAN ALI
24043538
713-222-7211
800 Commerce Street
Houston TX 77002



Laura Perez-Reyes
District Clerk of Cameron County
974 E Harrison St.
Brownsville, Texas 78520

Signed: 6/7/2021 10:23:35 AM

By: 

Viviana Fuentes, Deputy Clerk

<p>2021-DCL-03385-I 445th District Court</p>	<p>Eddie Vela vs. Home Depot U.S.A., Inc.</p>
-----------------------------------------------------------------	------------------------------------------------------------------------------

RETURN OF SERVICE

Executed when copy is delivered:

This is a true copy of the original citation, was delivered to defendant _____, on the _____ day of _____, 20_____.

NAME/ADDRESS FOR SERVICE

_____ Officer
_____ County, TX

By: _____ Deputy

OFFICERS RETURN

Came to hand on the _____ day of _____, at _____ o'clock ____m and _____ County, Texas, by delivering to each of the within named defendants in person, a true copy of this _____ with the date of delivery endorsed thereon, together with the accompanying copy of the _____ at the following times and places, to wit:

NAME	DATE/TIME	PLACE/COURSE/DISTANCE FROM COURTHOUSE

And not executed as to the defendant(s), _____
The diligence used in finding said defendant(s) being: _____

and the cause or failure to execute this process is:

and the information received as to the whereabouts of said defendant(s) being:

FEEES:

SERVING PETITION/COPY \$ _____

TOTAL: \$ _____

County, TX

By: _____ Deputy

AFFIANT

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The signature is not required to be verified. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return shall be signed under penalty or perjury and contain the following statement:

"My name is _____, my date of birth is _____, my address is _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED in _____ County, State of _____, on the _____ day of _____, 20____.

ID Number/Expiration of Certification

Declarant/Authorized Process Server

CITATION – PERSONAL SERVICE – TRCP 99

THE STATE OF TEXAS

2021-DCL-03385-I

Eddie Vela § IN THE 445TH DISTRICT COURT
VS § OF
Home Depot U.S.A., Inc. § CAMERON COUNTY, TEXAS

TO Home Depot U.S.A., Inc.
Corporation Service Company d/b/a CSC-Lawyers Inco,
211 E. 7th Street, Suite 620
Austin TX 78701

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org." TRCP. 99

You are hereby commanded to appear by filing a written answer to **Plaintiff's Original Petition** at or before 10:00 o'clock A.M. on the Monday next after the expiration of 20 days after the date of service of this citation before the Honorable 445th District Court of Cameron County, at the Courthouse in said County in Brownsville, Texas. Said **Plaintiff's Original Petition** was filed in said court on **June 07, 2021**, in the above entitled cause.

2021-DCL-03385-I

Eddie Vela
vs.
Home Depot U.S.A., Inc.

The nature of Petitioner's demand is fully shown by a true and correct copy of **Plaintiff's Original Petition** accompanying this citation and made a part hereof.

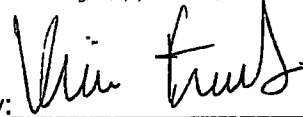
The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Brownsville, Texas, on this the 7th day of June, 2021.

ATTORNEY:
MUHAMMAD SULEIMAN A
24043538
713-222-7211
800 Commerce Street
Houston TX 77002



Laura Perez-Reyes
District Clerk of Cameron County
974 E Harrison St.
Brownsville, Texas 78520
Signed: 6/7/2021 10:23:35 AM

By: 
Viviana Fuentes, Deputy Clerk

06/09/21
[Handwritten signature]
[Handwritten initials]

2021-DCL-03385-I
445th District Court

Eddie Vela
vs.
Home Depot U.S.A., Inc.

RETURN OF SERVICE

Executed when copy is delivered:

This is a true copy of the original citation, was delivered to defendant _____, on the _____ day of _____, 20_____.

NAME/ADDRESS FOR SERVICE

 _____ Officer
 _____ County, TX

By: _____ Deputy

OFFICERS RETURN

Came to hand on the 08 day of June 2021, at 7:43 o'clock Am and _____ County, Texas, by delivering to each of the within named defendants in person, a true copy of this _____ with the date of delivery endorsed thereon, together with the accompanying copy of the _____ at the following times and places, to wit:

NAME	DATE/TIME	PLACE/COURSE/DISTANCE FROM COURTHOUSE

And not executed as to the defendant(s), _____

The diligence used in finding said defendant(s) being: _____

and the cause or failure to execute this process is: _____

and the information received as to the whereabouts of said defendant(s) being: _____

FEES:

SERVING PETITION/COPY \$ _____

TOTAL: \$ _____

 _____ Officer
 _____ County, TX

By: _____ Deputy

 AFFIANT

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The signature is not required to be verified. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return shall be signed under penalty or perjury and contain the following statement:

"My name is _____, my date of birth is _____, my address is _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED in _____ County, State of _____, on the _____ day of _____, 20_____.

 ID Number/Expiration of Certification

 Declarant/Authorized Process Server